



Billing Codes 3510–22–P; 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XD366

[FWS–R1–ES–2014–N095]

Draft Environmental Impact Statement; Proposed Washington Department of Natural Resources Aquatic Lands Habitat Conservation Plan, Washington

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of availability; announcement of meetings; request for comment.

SUMMARY: The Washington Department of Natural Resources (WDNR) has submitted applications to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) (together, the Services) for incidental take permits (permits) for a term of 50 years, pursuant to the Endangered Species Act of 1973, as amended (ESA).

The permit applications address incidental take of listed species caused by WDNR authorizations of shellfish aquaculture, log booming and storage, and overwater structures undertaken by individuals, businesses, and governmental agencies on 2.6 million acres of State-owned aquatic lands, including marine and freshwater tidelands, shorelands, and bedlands of the State of Washington. The proposed permits would authorize take, incidental to otherwise lawful activities, of 29 species of fish and wildlife, including federally listed threatened and endangered species. As required by the ESA, WDNR has prepared a Habitat Conservation Plan (HCP) designed to minimize and

mitigate the impacts to the maximum extent practicable, that will likely result from such taking. A draft implementing agreement (IA) for the HCP has also been prepared. The Services have jointly prepared a Draft Environmental Impact Statement (DEIS) in accordance with requirements of the National Environmental Policy Act (NEPA). The DEIS evaluates the impacts of, and alternatives to, the proposed HCP and issuance of the permits. We are announcing public meetings and requesting public comment on the DEIS, proposed HCP, and the IA.

DATES: Written comments on the DEIS, proposed HCP and draft IA must be received from interested parties no later than [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Services and the WDNR will conduct four public meetings to inform the public about the DEIS, proposed HCP, and the IA. See SUPPLEMENTARY INFORMATION section for meeting dates, times, and locations.

ADDRESSES: Obtaining Documents: The DEIS, HCP and related documents are available electronically on the World Wide Web at <http://www.nwr.noaa.gov/Salmon-Habitat/Habitat-Conservation-Plans/HCPs-in-Process.cfm> and <http://www.fws.gov/wafwo/>.

Submitting Comments: You may submit written comments by any of the following methods:

- U.S. mail: Scott Anderson, National Marine Fisheries Service, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503; or Tim Romanski, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503.
- Email: WFWOComments@fws.gov. Include the identifier “WDNR Aquatic

Lands HCP EIS” in the subject line of the message.

- Facsimile: 360–753–9518.
- In-Person: Written comments will be accepted at the public meetings, or can be dropped off during regular business hours at the above address.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tim Romanski, U.S. Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503; telephone 360–753–9440; facsimile 360–753–9518; or email Tim_Romanski@fws.gov; or Scott Anderson, National Marine Fisheries Service, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503; telephone 360–753–5828; facsimile 360–753–9517; or email scott.anderson@noaa.gov. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service TTY 800–877–8339 or visit Federal Relay at <http://www.federalrelay.us/>.

SUPPLEMENTARY INFORMATION:

Public Meeting Information and Special Accommodation

The public meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation services or other auxiliary aids should be made at least 7 working days prior to the meeting date by contacting: Scott Anderson, National Marine Fisheries Service, at telephone 360–753–5828; or email scott.anderson@noaa.gov; or Tim Romanski, U.S. Fish and Wildlife Service, telephone 360–753–9440; facsimile 360–753–9518; or email Tim_Romanski@fws.gov.

The four meetings will be held at the following locations listed below:

1. Tuesday, October 7, 2014, 6 p.m. to 8:30 p.m., Skagit Valley College, Mount Vernon Campus, Angst Hall, Room A-125, 2405 East College Way, Mount Vernon, WA 98273.

2. Thursday, October 9, 2014, 6:30 p.m. to 8:30 p.m., Cowlitz County Public Utility District Office, 961 12th Avenue, Longview, WA 98632.

3. Monday, October 13, 2014, 6:30 p.m. to 8:30 p.m., Pierce County Public Library, Processing and Administration Center, Rooms B and C, 3005 112th Street E, Tacoma, WA 98446.

4. Wednesday, October 15, 2014, 6:30 p.m. to 8:30 p.m., City of Pasco Senior Center, Multi-Purpose Room North, 1315 N 7th Avenue, Pasco, WA 99301.

Statutory Authority

Section 9 of the ESA and its implementing Federal regulations prohibit the “taking” of a species listed as endangered or threatened. The term “take” is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harass is defined as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, including breeding, feeding, and sheltering. “Harm” is defined by FWS regulation to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NMFS’ definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding,

spawning, migrating, rearing, and sheltering (64 FR 60727; November 8, 1999) (50 CFR 222.102).

Section 10 of the ESA and the implementing regulations provide that the Services may issue permits, under limited circumstances, to allow the take of listed species incidental to, and not the purpose of, otherwise lawful activities. The FWS regulations governing permits for endangered species are promulgated in 50 CFR 17.22; regulations governing permits for threatened species are promulgated in 50 CFR 17.32. The NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

The WDNR has submitted applications to the Services for permits pursuant to section 10(a)(1)(B) of the ESA. As required by section 10(a)(2)(A) of the ESA, WDNR has developed an HCP designed to minimize and mitigate the impacts that will likely result from incidental take, of 29 species addressed in the HCP, that is reasonably certain to be caused by activities authorized by WDNR on State-owned aquatic lands. This HCP addresses multiple species and habitats, and encompasses the entirety of the 2.6 million acres of aquatic lands managed by WDNR. Nearly all the marine and freshwater bedlands, approximately 70 percent of the shorelands of navigable lakes and rivers, and approximately 30 percent of the tidelines in Washington are owned and managed by the State. WDNR is seeking two permits for incidental take of species under the respective jurisdictions of NMFS and the FWS. Each Permit would have a term of 50 years to run concurrently with the HCP. This term ensures that WDNR will be able to implement the defined conservation strategies and monitoring efforts for all activities covered by the

HCP that currently exist on State-owned aquatic lands.

The Services formally initiated public scoping for the proposed HCP and EIS through publication of a Notice in the Federal Register on October 24, 2006 (71 FR 62251). That notice announced a public scoping period during which interested parties were invited to provide written comments expressing their issues or concerns relating to the proposal, and to attend five public scoping meetings held between October 24, 2006, and November 8, 2006, at various locations in Washington. Utilizing the public scoping comments, the Services have prepared a DEIS to analyze the effects of the alternatives on the human environment. The DEIS, proposed HCP, and IA documents are now available for public review and comment with this notice.

Covered Activities

WDNR's goal in developing this HCP is to provide a process for management of State-owned aquatic lands that meets the applicable requirements of the ESA and WDNR's responsibilities to manage aquatic lands for a balance of public uses and environmental protection. This includes ensuring that the effects of the specific WDNR activities included in the permit will be mitigated to the maximum extent practicable, and that there is no appreciable reduction in the likelihood of the survival or recovery of a covered species in the wild due to permitted incidental take or habitat degradation. The HCP provides a method for habitat management on State-owned aquatic lands that supports species recovery and reduces the risk of extinction. The HCP focuses on a set of activities that WDNR can affect both how and where they occur on State-owned aquatic lands. Three general categories of authorized activities are included in the HCP: Shellfish aquaculture, log booming and storage, and overwater structures.

Shellfish aquaculture includes the operations, facilities and structures that WDNR authorizes on State-owned aquatic lands associated with the commercial planting and harvesting of shellfish. The harvesting of wildstock shellfish is not covered.

Log booming and storage includes placing logs into and taking them out of the water, assembling and disassembling of log rafts before or after their movement in water-borne commerce, and water-based sorting and temporary holding of the logs. Log storage includes the water storage of logs in rafts or other preparation for shipment in water-borne commerce. The use of aquatic lands for these activities occurs as part of larger commercial logging operation, and because the activities are closely related, WDNR frequently combines the two activities into a single authorization.

Overwater structures are defined as structures built over, under, or floating on the water associated with recreation, industry, or habitation. The group is broken into two categories: Single element structures, meaning those with only one associated structure such as a private pier; and multiple element structures that contain a complex of interrelated structures at a single facility, such as a commercial marina or shipping terminal. Activities associated with overwater structures typically occur year-round, with heavier use of recreational facilities occurring in the summer. While a majority of the structures are permanent, structures such as mooring buoys, floating docks, or rafts may be removed in the winter. Although authorizations for overwater structures vary in duration, the structures themselves may remain indefinitely. This is particularly true for multiple-element structures, where the structures are often valuable enough to remain in place across multiple lease terms and business operators.

Covered Species

The Aquatic Lands HCP addresses 29 listed and non-listed species of fish, birds, and other animals. The FWS has jurisdiction for 15 of the covered species, including the marbled murrelet (Brachyramphus marmoratus), western snowy plover (Charadrius alexandrinus nivosus), black tern (Chlidonias niger), harlequin duck (Histrionicus histrionicus), common loon (Gavia immer), Columbia spotted frog (Rana luteiventris), northern leopard frog (Rana pipiens), Oregon spotted frog (Rana pretiosa), western toad (Bufo boreas), Pacific pond turtle (Actinemys marmorata), Pacific lamprey (Lampetra tridentata), bull trout (Salvelinus confluentus), coastal cutthroat trout (Oncorhynchus clarki clarki), kokanee salmon (Oncorhynchus nerka), and white sturgeon (Acipenser transmontanus). The marbled murrelet, western snowy plover, and bull trout are listed as threatened under the ESA. The Oregon spotted frog (Rana pretiosa) is a species proposed for listing as threatened or endangered.

The NMFS has jurisdiction for 14 of the covered species including Chinook salmon (Oncorhynchus tshawytscha), coho salmon (Oncorhynchus kisutch), chum salmon (Oncorhynchus keta), sockeye salmon (Oncorhynchus nerka), pink salmon (Oncorhynchus gorbuscha), steelhead trout (Oncorhynchus mykiss), green sturgeon (Acipenser medirostris), eulachon (Thaleichthys pacificus), Pacific herring (Clupea pallasii), Pacific sand lance (Ammodytes hexapterus), surf smelt (Hypomesus pretiosus), bocaccio rockfish (Sebastes paucispinis), canary rockfish (Sebastes pinniger), yelloweye rockfish (Sebastes ruberrimus), and southern resident orca (Orcinus orca). Chinook, chum, coho, sockeye, and steelhead trout have one or more evolutionary significant units that are designated as endangered or threatened under the ESA. In addition, the yelloweye rockfish, canary rockfish, eulachon, and green sturgeon are listed as threatened

under the ESA. The southern resident orca and bocaccio are listed as endangered under the ESA.

Covered Lands

The Aquatic Lands HCP covers those lands directly owned by the State of Washington and managed by WDNR that underlie navigable freshwater, marine, and estuarine waters within the State of Washington. Under Federal law, Washington received title to those lands upon Statehood, and the State asserted ownership in Article XVII, Section 1 of the Washington State Constitution. This HCP does not cover aquatic lands that were sold into private ownership, managed by agencies other than WDNR, or are under waters that are not navigable for establishing State title.

Navigable waters are those lands that are capable of serving as a highway for commerce in their natural and ordinary condition, using customary modes of travel and trade on water. WDNR presumes all bodies of water meandered by a government surveyor to be navigable for the purpose of establishing State title, unless declared otherwise by a court. If there is a dispute about whether a water body is navigable for the purpose of vesting title in the State, the judiciary makes the final determination.

While State ownership in saltwater is well established, the extent of State-owned aquatic lands underlying freshwater is less established, because the navigability of some waterbodies has yet to be analyzed or adjudicated. In addition, because State ownership, and thus WDNR's management authority, generally follows gradual changes in the boundary of the water body caused by natural accretion, erosion, and reliction, the location of waterbodies managed by WDNR may change over time.

The WDNR manages approximately 2.6 million acres of submerged land,

including the attached biological communities (submerged aquatic vegetation and infauna). State-owned aquatic land extends 3 miles waterward into the Pacific Ocean, and includes submerged lands and resources to the center of the Strait of Juan de Fuca, Haro Strait, Boundary Pass, and the Strait of Georgia; the aquatic lands and resources surrounding the San Juan Archipelago; and the lands and resources underlying Puget Sound, Hood Canal, and navigable rivers and lakes across the State.

Alternatives

The following is a brief summary of the three alternatives evaluated in the DEIS and HCP (for details, refer to those documents):

Alternative 1: No-action – Under this alternative, WDNR would not implement a HCP, and permits would not be issued by the Services. The WDNR would continue managing and leasing State-owned aquatic lands in accordance with current practices, but no specific management strategies would be implemented by WDNR to ensure compliance with the ESA. The WDNR would not conduct a direct evaluation under the ESA of the effects of its management actions, nor would it consider the cumulative effects of its activities. WDNR would manage requests for uses of State-owned aquatic lands on a site-by-site basis. Currently, many use authorization agreements issued by Washington DNR require the implementation of practices designed to protect environmental resources. Additionally, Washington DNR has various programs currently in place that help conserve habitat (e.g., the Aquatic Reserves Program, Derelict Vessel Removal Program, and the Aquatic Lands Restoration Program). However, the degree of habitat protection, and the frequency and consistency of implementation, would not be assured over time without a HCP and permits because WDNR would not be committed to

a fully funded HCP and a legally binding permit.

Alternative 2: Proposed Action – Under this alternative, WDNR would implement the proposed HCP, and the Services would issue permits covering three general categories of activities (shellfish aquaculture, log booming and storage, and overwater structures) in freshwater, estuarine, and marine environments, provided all legal requirements are met (see the Covered Activities section above). A specific conservation program would be implemented through the HCP to ensure compliance with the ESA.

Alternative 3: HCP for Marine Areas Only – Under this alternative, WDNR would implement an HCP, and the Services would issue permits for covered activities only in marine and estuarine environments, provided all legal requirements are met. The activities, species, and area covered under this alternative would generally be a subset of those included under Alternative 2, and the HCP would focus on those species most likely to be affected. The HCP would not cover the Columbia spotted frog, Oregon spotted frog, northern leopard frog, western toad, Pacific pond turtle, or black tern, because in Washington State, these species occur only in freshwater habitats. Washington DNR would implement all of the elements of the HCP operating conservation program to ensure compliance with the ESA, but in marine and estuarine areas only. WDNR's habitat protection and restoration programs and actions would be applied toward compensation for unavoidable impacts from authorized uses in marine and estuarine waters only. In freshwater areas, WDNR would manage State-owned aquatic lands as described for Alternative 1, No Action, so there would not be the added protections of the HCP for the freshwater activities.

Public Availability of Comments

Comments and materials we receive, as well as supporting documentation we use in preparing the final EIS, will become part of the public record and will be available for public inspection by appointment, during regular business hours, at the Service's Washington Fish and Wildlife Office (see ADDRESSES). Before including your address, phone number, e-mail address, or other personal identifying information in your comment(s), you should be aware that your entire comment(s) — including your personal identifying information — may be made publicly available at any time. While you can ask us in your comment(s) to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C.1539) and NEPA (42 U.S.C. 4371 et seq.) and its implementing regulations (40 CFR 1506.6).

Dated: August 25, 2014.

Angela Somma, Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: August 25, 2014.

Richard R. Hannan, Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

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